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TO THE
HOUSE COMMITTEE ON JUDICIARY

THE TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION OF 2015

April 7, 2015
2:00 p.m.

TESTIMONY ON H.C.R. NO. 136

REQUESTING THE HAWAII BANKERS ASSOCIATION
TO OPINE WHETHER MEMBER FINANCIAL INSTITUTIONS
AND THEIR STAFF WHO CHOOSE TO SERVICE
MEDICAL MARIJUANA-RELATED BUSINESSES
RISK CIVIL AND CRIMINAL PROSECUTION UNDER FEDERAL LAW

THE HONORABLE KARL RHOADS, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
offering comments on behalf of the Department of and Consumer Affairs
("Department"), on House Concurrent Resolution No. 136.

H.C.R. 136 requests that the Hawaii Bankers Association: 1) opine whether
member financial institutions and their staff who choose to service medical marijuana-

related businesses risk civil and criminal prosecution under federal law; and 2) submit a report to prior to the convening of the 2016 Legislature.

State law does not prohibit banks from opening accounts for medical marijuana-related businesses (“businesses”). What is needed is a signal from federal bank regulators that they will not shut down a financial institution for doing business with legitimate medical marijuana businesses.

Federal Guidance

Two federal government agencies have issued guidance about how to provide banking services to legal marijuana businesses and comply with the Bank Secrecy Act/Anti-Money Laundering (“BSA/AML”) laws. The new guidance is not intended as a blessing of marijuana by the federal government, but more so an attempt to deal with the reality that exists in states where marijuana is legal. The main issue for the guidance was the risk posed by newly licensed marijuana businesses operating on a cash-only basis due to the lack of access to traditional banking services. However, two concerns may deter banks from opening these accounts: (1) because marijuana remains illegal under federal law, most banks are not open to accepting deposits from marijuana dispensaries out of fear of being accused of violating money laundering laws; and (2) the federal guidance would not be enforceable in court.

The guidance, a joint effort by the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN) and the U.S. Department of Justice, clarifies customer due diligence expectations and reporting requirements for financial institutions seeking to provide services to marijuana businesses. Specifically the guidance says that

financial institutions should conduct customer due diligence in assessing the risk of providing services to a marijuana-related business, by:

- Verifying with the appropriate state authorities whether the business is duly licensed and registered;
- Reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business;
- Requesting from state licensing and enforcement authorities available information about the business and related parties;
- Developing an understanding of the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served (e.g., medical versus recreational customers);
- Ongoing monitoring of publicly available sources for adverse information about the business and related parties;
- Ongoing monitoring for suspicious activity, including for any of the red flags described in the guidance; and
- Refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.

Additionally, the guidance specifies that the obligation to file a suspicious activity report (SAR) is unaffected by any state law that legalizes marijuana-related activity.

Financial Institutions

Based on this guidance, Director Jennifer Calvery, FinCEN, reported that a review of the SARs filed between February 14 and August 8, 2014, there were 105 financial institutions in one-third of the country engaged in banking relationships with marijuana-related businesses. Credit unions may be more likely to open these accounts, however, the one credit union that chose to open accounts is still waiting for the federal approvals. Six months ago, a credit union in Colorado applied for deposit insurance from the National Credit Union Administration (NCUA), the federal agency that insures most credit unions. The NCUA has not approved the application yet. If the NCUA says no, the credit union plans to obtain private deposit insurance. But there is no alternative to the Federal Reserve for gaining access to the financial network that would enable the credit union members to make electronic payments and write checks that can be cashed at other financial institutions.

Potential Advantages

There are potential advantages to allowing medical marijuana-related businesses to opening bank accounts, including:

1. A bank account would likely help reduce crimes against property and persons engaged in these types of businesses by reducing the need to store and handle large amounts of cash without the security offered by bank accounts/deposits;

2. Businesses can make payments by check to utilities, taxation authorities, and employees;¹
3. Businesses can operate their business like other retail establishments that use banks; and
4. Business customers can use credit cards or other non-cash methods to purchase medical marijuana through a state-sanctioned dispensary system.

Should the Legislature decide to establish a local medical marijuana dispensary system, the issues raised above should be considered to gain a full understanding of the potential impact on Hawaii's financial institutions.

Thank you for the opportunity to provide comments. I would be pleased to respond to any questions you may have.

¹ States reported that prior to banks accepting marijuana businesses as customers, the businesses would overpay the state tax department and wait for a reimbursement.

Presentation To
House Committee on Judiciary
April 7, 2015 at 2:00 pm
State Capitol Conference Room 325

Testimony in Opposition to House Concurrent Resolution 136

TO: The Honorable Karl Rhoads, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions with branch offices in the State of Hawaii.

The legalization of medical marijuana in 23 states, the District of Columbia, and more recently the legalization of marijuana for recreational use in four states and the District of Columbia have posed complex issues for the banking industry. Even with state action to legalize the use of marijuana, the plain fact is that marijuana, its use, cultivation, transport, sale, possession, and all related activities, remain unequivocally illegal under federal law. Any state action does nothing to change that and it does not appear that Congress has any desire or willingness to legalize marijuana at a federal level. As long as it is considered an illegal substance by federal law, banks across the country have serious risks and challenges if they desire to provide banking services to any businesses involved with marijuana in any form. That includes obviously businesses growing or selling marijuana but also landlords or vendors assisting or serving these businesses.

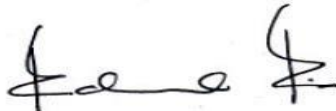
There are several federal statutes, dating back to 1970, that affect a bank's ability to serve clients involved with marijuana. Several of those statutes are identified in this resolution, including the Controlled Substances Act, The Bank Secrecy Act, the Patriot Act, and the Comprehensive Drug Abuse Prevention and Control Act. As more states have legalized marijuana use in some form, there have been some attempts to reconcile federal and state marijuana laws. The Department of Justice, as well as the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) have issued some guidance for banks interested in serving marijuana businesses. However, as well intended as these guidances may have been, they have been inadequate in providing assurances to banks that they will not face civil or criminal penalties, and even the possibility of losing their banking charters, should they provide financial services to marijuana related businesses.

In addition to the legal and regulatory risks, banks also face many other significant risks when considering relationships with marijuana businesses. There is reputation risk, as other bank customers and the community at large may look unkindly at a bank facilitating the distribution of an illegal substance. There are operational risks, as compliance with FinCEN requirements are significant. Not only are there requirements for extensive due diligence efforts before dealing with a marijuana business but there are other significant operational challenges on an ongoing basis. Banks must also be cautious in assessing relationships with other clients that might be peripherally related to marijuana businesses, such as landlords and vendors. And there are lending risks as well, since lending on illegal collateral is prohibited. This includes lending on marijuana related real estate.

In those states where marijuana has been legalized for medicinal use, the dispensaries in those states have found that financial institutions in their marketplace have declined to offer banking services. That includes accepting credit cards for purchases. So, these dispensaries have had to deal in cash only. Their employees are paid in cash, and they pay all their other bills in cash. Even taxes and fees to the government agencies are paid in cash.

Regarding HCR 136, if the resolution is seeking an opinion whether banks risk civil and criminal prosecution, the federal statutes are clear that such risks exist. The experiences in other states demonstrate that the banks in those communities are not willing to face those risks. And, frankly, under current circumstances, it is highly unlikely any bank in Hawaii will enter into any relationships with marijuana dispensaries. So, we oppose this resolution as the answer you may be seeking is already very clear. Perhaps the resolution instead should be directed to Congress to ask that they act to reconcile the conflicts between Federal and State laws on this complex issue.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

A handwritten signature in black ink, appearing to read 'Edward Y. W. Pei', with a stylized flourish at the end.

Edward Y. W. Pei
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